



City of Peabody Conservation Commission

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5782

MINUTES

DECEMBER 14, 2022

YouTube link: <https://www.youtube.com/watch?v=0V39-cWLJy8>

The Peabody Conservation Commission hearings will be held remotely until March 31, 2023. Remote participation is allowed in accordance with Section 20 of Chapter 22 of the Acts of 2021 signed into law by Governor Baker on February 12, 2022, suspending certain provisions of the Open Meeting Law, G.L. c. 30A, Section 18. as extended by Section 20 of Chapter 22 of the Acts of 2022.

Individuals may participate remotely in the meeting via a remote participation platform called Zoom.

MEMBERS PRESENT

Chairman Stewart Lazares
Vice Chairman Michael Rizzo
Sec. Michael Vivaldi
Arthur Athas
Amanda Green
Alt. Ritamarie Cavicchio

MEMBERS ABSENT

Bruce Comak
Travis Wojcik

1 alternate member opening
(forward resume to mayor's office
if interested in being appointed)

Also Present: The Honorable Mayor Edward Bettencourt; William Paulitz, City Engineer; Lucia DelNegro, Conservation Agent

CHAIRMAN LAZARES CALLED THE MEETING TO ORDER at 7:02 PM

NOTICES OF INTENT

1. A continued Public Hearing on a Notice of Intent submitted by Hancock Associates for Michael Larkin (40 Oak Street Development LLC). The proposed work is site improvements and redevelopment which includes a 40B housing project, paved vehicular and pedestrian access, landscaped areas, connections to municipal utility services and a stormwater management system. The property is known as 40 Oak Street, Map 95, Lot 89X, Peabody MA.

Present: Michael Larkin (owner), Joseph Peznola (Hancock Associates), Devon Morse (Hancock Associates)

Documents:

- ▶ The Residences at O'Shea Field- 40 Oak Street prepared by Hancock Associates, stamped by Joseph D Peznola Sheets 1-9, scales vary. (To be revised)
- ▶ Landscape Plan- sheet L1 prepared by Kattaman Corporation dated 8.12.2022, Scale: 1"=20'.
- ▶ Flood Response Plan- prepared by Joseph D Peznola. (To be revised)
- ▶ Draft Flood Response Plan Narrative- dated May 2021.
- ▶ Operation & Maintenance Plan- drafted by Hancock Associates (to be revised)
- ▶ Snow and Snowmelt Management Narrative- (To be revised)

Summary: Mr. Peznola stated there were two outstanding items since the last hearing. One was an additional review by the peer reviewer regarding the performance standards for flood plain BLSF. Ms. Bernardo of Horsley Witten Group was present to discuss. The second request was for an animation of flooding at the request of the chairman. Mr. Peznola shared the slide and discussion ensued regarding flooding on the site and in the neighborhood. Ms. Bernardo supplied a memo dated 11.1.2022. She referred the commission to this memo and discussion ensued regarding the site and flood waters. There was a further discussion about the proposed restricted hydraulic connection in the basin and if the project meets the performance standards for BLSF. The applicant stated the site will always flood. The applicant's engineer believes the project meets all performance standards under 310CMR10. The discussion ensued further regarding the hydraulic connection and performance standards. The honorable Mayor Bettencourt spoke and gave a history of the project. The project is a 40B project. At the time of the 40B application the city did not meet their 10%. The project was originally opposed vehemently by the city and ZBA. The ZBA ultimately denied the application after many hearings. The Larkin Brothers (owner/applicant) appealed the decision to Mass Housing and the Housing Appeals Committee. They required mediation and an agreement ensued. The number of units have been reduced and other positive changes were made to the plan during this process. Discussion ensued regarding the 40B process and what could happen if the commission denied the project before them at the hearing tonight. The item was open to members of the public. The abutter was present with his attorney and consultant. Attorney Sam Vitali gave an introduction speech and their environmental consultant, Wayne Lozzi, spoke against the project.

MR LOZZI: I would like to read a portion of the Regs. 10.57(4)a2 *“Work within BLSF including that work required to provide the above-specified compensatory storage, shall not restrict flows so as to cause an increase in flood stage or velocity.”* What that
Page 3- 12.14.22

basically, means is that if you design or propose anything on that site that would restrict flood waters it is a violation of the performance standards. As I look at these plans, I notice there is a one-hundred-foot knee wall proposed. There is various curbing all throughout the site. There is a berm around the flood mitigation basin. These can be considered restrictions and are in violation of the regs. It is not permissible. Just because he is proposing, I don't know what we want to call it, a housing site/development that he is going to put in landscaping, beautification and it will look nice. The regs do not look at it aesthetically. They look at it very technical. If you propose any type of restriction on that site, it is a violation period. As far as the argument on the lower elevations and assumption that it is isolated, I am sorry but the regs are very clear. FEMA labels them and even though it may be isolated, and he pointed that out in his mapping and demonstration. The bottom line is that under the regulations that area is regulated under FEMA and regulated under these regs. There is a process if the engineer or applicant has a problem with the particular elevation or site there is an appeal process through FEMA which they can ask for a Letter of Map Amendment or Revision. The regulation don't have any exemptions or means of bypassing that performance standard. If you don't meet it, then the issuing authority is obligated to deny it. There are other issues on the site that I think we have problems with.

Discussion ensued. Further conversation ensued regarding snow storage areas and the basin being used for snow storage. Mr. Lozzi also mentioned that he was not convinced the cut and fill plan picked up all the proposed fill areas. In his opinion some fill areas are not shown on said plan. The abutter stated they will be appealing the project if it is approved for all the reasons stated. Further discussion ensued regarding the proposed snow storage and pipes and proposed drainage easements on said property. Drainage issued will be issued to the city for access to said infrastructure.

Motion to close the public hearing as made by Mr. Rizzo. Seconded by Ms. Cavicchio. The motion passed 5-1 with Ms. Green not voting.

A motion was on the floor to issue a permit. Further discussion/debate ensued regarding proposed conditions.

Motion to issue a standard Order of Conditions 1-50 adding the following special conditions: 51) Operation & Maintenance Plan is in perpetuity. Maintenance logs shall be submitted annually on 10.31 via email to city conservation staff once the stormwater system is online and functioning; 52) Open space located in the rear of the property shall remain in perpetuity. It can never be paved over or filled etc.; 53) Permanent snow storage is only allowed in areas designated as “snow storage” as shown on Snow Storage Plan attached to this Order. Once these areas are exhausted temporary snow storage is allowed but MUST be removed off site within 4 to 7 days from the end of the storm. Long term Snow Storage is NOT allowed in parking spaces or in the basin; 54) Granite posts as shown on plan around detention basin with signs stating: “NO SNOW STORAGE IN BASIN” must remain in perpetuity. (Granite posts shall be installed 3 feet in the ground; 3 feet above grade). The sign shall have a steel marker on top and a reflective lettering sign no smaller than 1 square foot with the wording as stated above or

similar; 55) If a parking lot is approved within the Flood Zone, signage shall be posted, and maintained in perpetuity, identifying the location of said Flood Zone and shall read "This is a Flood Zone – Vehicles may be towed in the event of a flood." As shown on **Page 4- 12.14.22**

plan dated 12.30.22. Signs to be erected in parking lot "flood zone" are to remain in perpetuity. See also the Draft Flood Response Plan dated May 2021 for further details; 56) Privacy fence proposed around IVW should be raised 6 inches from grade to allow wildlife movement. This condition shall remain in perpetuity; 57) O&M in perpetuity. Maintenance reports to be submitted annually via email to ConComm staff on 10.31 once system is online; 58) Dewatering plan on record must be used during construction; 59) The 12-inch pipe shall be replaced and maintained as shown on plans and as discussed (Mr. Larkin agreed to fix deficiencies in the pipe as needed for the stormwater system to successfully enter the city's system. Requirements will be determined after a camera video has been reviewed.); 60) There will be NO long-term STOCKPILING OF SOILS allowed on site. Temporary stockpiling of soil is allowed for 14 days. Stockpiles must be surrounded by erosion controls and covered at all times; 61) All construction materials that will be temporarily stored on site must be stored on elevated platforms to allow the passage of water underneath as shown on detail; 62) Leases shall contain all the information in The Flood Response Plan; 63) The Flood Response Plan shall be posted on each floor of the building and in stairways; 64) The Flood Response Plan shall include information directing to the tenants what to do in each event you have outlined; 65) The Infrastructure Maintenance Plan shall include a review of conditions of the numerous posts supporting the structure to make sure the flooding has not deteriorated the support. This report shall be sent to the Conservation Commission Agent and the Building Inspector by Oct 31 of each year. **DPS/City engineer conditions:** See memo dated 11.8.22- DPS requested 20 conditions be added to our local OOC: 1) Prior to issuing a building permit: a) The applicant shall provide our department with 2 complete sets of their final design plans. b) The applicant shall provide the city with a utility easement for the purposes of maintaining the stormwater drain line from Little's Lane to Oak Street. c) A subsurface investigation is to be conducted to determine the presence or absence of past USTs, subsurface collection systems, soil and/or groundwater contamination due to its former use as an auto garage and auto repair facility (from about 1914 to at least 1949) per the recommendation of the applicant's Environmental firm Partner Engineering and Science, Inc. d) Additional subsurface investigation of the front infiltration area is to be conducted. This investigation shall be done by a Massachusetts licensed soil evaluator and witnessed by this Department. e) A copy of the finalized roof plans showing the blue roof shall be provided to this Department. f) The site plan shall be updated to include the proposed infrastructure needed to collect the stormwater under the building. This infrastructure shall include an MDC trap as shown on the site plan. g) The applicant will need to obtain written permission from the City's Plumbing Inspector's Office waiving the requirement that the stormwater collected below the building not be discharged into the City's sewer system. As the stormwater being detained under the proposed building will not be allowed to enter the City's municipal sewer system. 2) All dewatering shall be approved by the City's environmental engineer and be in compliance with the City's MS4 permit. 3) In respect to the onsite infiltration area: a) All fill material is to be removed from under the infiltration bed to the depth of the estimated seasonal high groundwater (ESHGW) and replaced with Title 5 approved sand. A sieve analysis shall be conducted on any fill material below the ESHGW to verify that it has an infiltration rate equivalent to a loamy sand. b) A bed bottom inspection of the proposed infiltration bed shall be conducted by the applicant's licensed

soil evaluator and witnessed by this Department. The inspection shall take place prior to the installation of any stone within the infiltration bed. c) The area of the infiltration bed is not to be used for stockpiling, temporary sedimentation basins or any other activities that
Page 5- 12.14.22

may negatively impact its ability to properly operate in the future. d) This project is required to use a blue roof on the main building per the Hancock Stormwater Report dated March 2020, revised September 26, 2022. 4) The Flood Response Plan shall include securing or removal of the onsite dumpster. 5) The StormTrap System shall be lined and fully watertight. The system shall be tested for watertightness in the presence of this Department. 6) The grass open space that is being utilized for flood storage shall be graded in a manner to prevent the ponding of stormwater. In addition, the area shall be mowed and maintained on a regular monthly basis. 7) All stormwater piping (private or public) that are located in the City's right-of-way shall be reinforced concrete pipe. 8) A CCTV inspection of the drain line within Oak Street (from the tie-in at 40 Oak Street to its terminus at Foster Street) shall be performed by the applicant. Any deficiencies found during the inspection process shall be repaired by the applicant at their expense. 9) The site shall be graded to pitch the stormwater away from the building at a minimum of a 3% slope for 20-feet. 10) The catch basin at the intersection of Elliot Place and Little's Lane (that the applicant is proposing to core into) is to be removed and replaced with a new catch basin (with a 4-foot sump). 11) Inlet protection shall be installed in all new catch basins immediately after they are constructed. 12) A plan shall be provided showing the location of all stormwater BMPs within the proposed site. This plan shall be drawn to scale and have all BMPs labelled. 13) Mulch wattles shall be installed along the perimeter of the entire site to minimize offsite runoff from occurring. 14) A construction entrance shall be installed and utilized per plan. 15) Mulch wattles shall be placed around all stockpiling areas. 16) Drain manhole D8 shall be bolted down to prevent lifting of the manhole during large storm events. 17) The snow storage area and the grass open space shall be excavated 2-feet below grade and all existing fill material shall be removed and replaced with clean sand and topped with 6-inches of loam. 18) A signed post construction Illicit Discharge Statement shall be provided to this Department prior to the drainage system coming online. 19) At least 14 days prior to commencing land disturbance activities, the applicant shall provide copies of the following documents to the City: a) Stormwater Pollution Prevention Plan b) Signed Operation & Maintenance Plan c) Construction Schedule 20) The property owner shall mail proof of inspections and cleaning of the stormwater system to the Public Services Department c/o Environmental Engineer, 50 Farm Avenue, Peabody, MA 01960 by October 31st of every year and is to retain a copy for themselves. Further adding the **Preamble:** The property owner is aware of the risks associated with building in BLSF/FEMA Flood Plain. The commission will be held harmless, and the property owners assume the responsibility if flooding occurs. The Peabody Conservation Commission will not be held liable for any future flooding on said property as made by Mr. Rizzo. Seconded by Ms. Cavicchio. The motion passed 4-2 with Mr. Athas and Ms. Green voting NO.

2. A continued Public Hearing on a Notice of Intent submitted by Hayes Engineering, Inc. (Anthony Capachietti) for Cy Tenney Residences, LLC (Arthur Pimental). The proposed work is the construction of a multi-family residential building with associated driveways, parking, access and utilities within buffer to BVW and IVW. The property is known as 190R Newbury Street, Map 35, Lot 38A, Peabody MA.

Summary: Applicant requested a continuance.

Page 6- 12.14.22

Motion to continue until the January hearing as made by Mr. Rizzo. Seconded by Mr. Athas. Adopted unanimously 6-0.

3. A continued Public Hearing on a Notice of Intent submitted by GZA GeoEnvironmental, Inc. (Dan Nitzsche) for Emmanuel and Rose Papanickolas (owners) and JD Raymond Transport, Inc. (Will Boyle-applicant). The proposed work is the construction of a stormwater infiltration basin partially within the buffer zone to a wetland resource. The property is known as 25 Farm Avenue, Map 69, Lot 006 and 007, Peabody MA.

Summary: revised paperwork was submitted after the deadline. Per commission policy the item will be continued until the next regularly scheduled hearing.

Motion to continue until January as made by Mr. Rizzo. Seconded by Ms. Cavicchio. Adopted unanimously 6-0.

ENFORCEMENT ORDERS

4. A continued Enforcement Order issued to the Salem Country Club- for the following activities: Removal of living trees/grinding/grubbing stumps in buffer zone/in close proximity to jurisdictional resource areas and depositing woodchips in buffer zones and along local riverfront woods. The property address is known as 133 Forest Street, Peabody MA.

No discussion on the item.

Motion to continue to a Special Hearing on Tuesday January 10, 2023-4:30PM in the Wiggin Auditorium, Peabody City Hall as made by Mr. Rizzo. Seconded by Mr. Vivaldi. Adopted unanimously 6-0.

5. A continued Enforcement Order issued to Dan Mayer (Mayer Tree)- for the following activities: Removal of living trees/grinding/grubbing stumps in buffer zone/in close proximity to jurisdictional resource areas and depositing woodchips in buffer zones and along local riverfront woods. The property address is known as 133 Forest Street, Peabody MA.

No discussion on the item.

Motion to continue to a Special Hearing on Tuesday January 10, 2023 - 4:30PM in the Wiggin Auditorium, Peabody City Hall as made by Mr. Vivaldi. Seconded by Ms. Green. Adopted unanimously 6-0.

REQUEST FOR DETERMINATION OF APPLICABILITY

Item taken out of order

8. A Public Hearing on a Request for Determination of Applicability submitted by Idania Pena (owner) and Ruth Pena. This is an After-the -Fact filing for the proposed work under construction: repair existing shed (block foundation etc.),

earthwork, retaining wall, porch addition, revegetate yard with grass and plantings. The property is known as 37 Bowditch Street, Map 75, Lot 77, Peabody MA.

Page 7- 12.14.22

Present: Idania Pena (owner) and Ruth Pena

Summary: The application is an after-the-fact filing. The property owner abuts railroad tracks and was not aware that a locally protected resource was located behind her property. The site already has erosion controls installed and they are good condition. Per the building department a permit had to be issued for a wall to stabilize the site and protect abutting properties. The work is minor in nature. The commission felt they could vote favorably on a Determination Permit. A NOI is not necessary. The lawn area will have grass and other plantings. The item was open to the public. There were no members that wished to speak for or against the project.

Motion to close the public hearing as made by Mr. Athas. Seconded by Ms. Cavicchio. Adopted unanimously 6-0.

Motion to issue a Negative Determination with the following condition: 1) Erosion controls must be in good condition throughout the duration of construction. The soil must be stabilized on site at all times as made by Mr. Athas. Seconded by Mr. Vivaldi. Adopted unanimously 6-0.

CONTINUED ENFORCEMENT ORDERS

6. A continued Amended Enforcement Order issued to Pedro Polini for work located at 60 Warren Street Extension. The property owner has done various projects in riverfront without a permit from the commission. The most egregious issue is the failing retaining wall, and the stormwater drainage pipes into Proctor Brook.

Motion to remove the item from the agenda but the enforcement action is still valid to be decided on further action as made by Mr. Rizzo. Seconded by Mr. Vivaldi. The motion passed 5-1 with Mr. Lazares voting NO.

7. An Enforcement Order issued to Alfred Dimambro, Trustee (Regency Realty Trust) for work located at 11-13 Wallis Street. There are ongoing as well as historic violations on this property (illegal dumping (appliances etc.), stockpiling of various items in riverfront/flood plain, fill in FEMA flood plain, alteration of riverfront without permit and ongoing "use" as what appears to be a contractor's yard.

The item was previously continued until the January hearing. No motion was necessary. The item will be heard on 1.11.2023 at 7pm via Zoom.

OTHER ITEMS

• **MINUTES- September 14, October 12 and November 9, 2022 meetings remotely held**

Motion to accept the minutes with minor changes as made by Mr. Athas. Seconded by Mr. Vivaldi. Adopted unanimously 6-0.

Page 8- 12.14.22

• **Adjournment**

Motion to adjourn as made by Mr. Athas. Seconded by Mr. Rizzo. Adopted unanimously 6-0.

The meeting adjourned at 9:42 PM.

Respectfully submitted, (To be signed electronically)

Chairman Stewart Lazares